

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Lead and Copper Requirements for Drinking Water (R-21-01)

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P.O. Box 942732, Sacramento, CA 94234-7320, by 5 p.m. on January 13, 2003, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-657-1459) or email (regulation@dhs.ca.gov) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS: In any of the following inquiries, please identify the action by using the Department regulation control number R-21-01:

1. In order to request a copy of this regulation package be sent to you, please call (916) 654-0381 or email regulation@dhs.ca.gov.
2. Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Alexis M. Milea of the Division of Drinking Water and Environmental Management at (510) 540-2177.
3. All other inquiries concerning the action described in this notice may be directed to Charles E. Smith of the Office of Regulations at (916) 657-0730, or to the designated backup contact person, Allison Branscombe, at (916) 657-0692.



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www.consumerenergycenter.org/flex/index.html

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Act (Sections 116300-116750, Health and Safety Code [H&S Code]). California has been granted “primacy” for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances to determine compliance with drinking water standards, also known as maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. Secondary MCLs are based on consumer acceptance, using parameters such as odor, taste, and appearance as measures of acceptability. The water supplier must notify the Department and the public when a primary or secondary MCL has been violated and take appropriate action. Public water systems must also sample for a number of “unregulated” chemicals, as set forth in regulation. When MCLs are not the most feasible or appropriate approach to minimizing the level of a contaminant in drinking water, regulations are adopted that use “treatment techniques” to control the levels of the contaminant instead. The lead and copper rule is a “treatment technique” regulation.

On December 11, 1995, for conformance with the federal lead and copper rule, 40 Code of Federal Regulations (CFR) Parts 141 and 142, [Federal Register (FR) 56 (110), 26460-26564, June 7, 1991; amended July 15, 1991 (56 FR 32113), June 29, 1992 (57 FR 28786) and June 30, 1994 (59 FR 33860)], California adopted requirements for community water and nontransient-noncommunity systems to monitor and treat drinking water to minimize the corrosivity and, therefore, the lead and copper levels, in water served to the public. On Jan 12, 2000, EPA promulgated further revisions to the lead and copper rule [Federal Register 65(8), 1950-2002]. The new federal revisions include requirements that California must adopt to maintain primacy and others that are optional. The California regulations now being proposed incorporate all the required and almost all of the optional federal revisions.

When the Department initially adopted the federal requirements, it had a limited timeframe within which to do so and was not able to rewrite the federal lead and copper rule to eliminate its redundancies, ambiguities, excess verbiage, and confusing organization. Consequently, the Department’s field staff has encountered difficulties implementing the regulations, and drinking water utilities have been challenged in their efforts to comply. Subsequent to EPA’s adoption of the federal lead and copper rule revisions, the Department determined that a rewrite of the existing regulations would

facilitate both enforcement and compliance efforts, and therefore the existing state regulations were rewritten while incorporating the federal lead and copper rule revisions. Given the major changes being proposed to the format of the existing state regulations, the proposed new state regulations are presented as a repeal of the existing lead and copper requirements in chapter 17.5 of division 4, title 22, California Code of Regulations, to be replaced by an entirely new chapter 17.5. Except as described below, all requirements in the proposed new chapter 17.5 are supported by references to the federal lead and copper rule (40 CFR Parts 141 and 142).

Specifically, the Department proposes to repeal the existing chapter 17.5 (sections 64670 through 64692, inclusive) of division 4, title 22, California Code of Regulations, and replace it with the proposed new chapter 17.5 (new sections 64670 through 64690.80, inclusive). The articles indicating the organization and content of the proposed new chapter 17.5 are as follows:

Chapter 17.5. Lead and Copper

- Article 1. General Requirements and Definitions
- Article 2. Requirements According to System Size
- Article 3. Monitoring for Lead and Copper
- Article 4. Water Quality Parameter (WQP) Monitoring
- Article 5. Corrosion Control
- Article 6. Source Water Requirements for Action Level Exceedances
- Article 7. Public Education Program for Lead Action Level Exceedances
- Article 8. Lead Service Line Requirements for Action Level Exceedances
- Article 9. Reporting and Recordkeeping

The net effect of the chapter reorganization and proposed incorporation of the most recent federal lead and copper rule revisions cited would be that:

- Large water systems (serving more than 50,000 people) deemed to have optimized corrosion control would be required to continue monitoring to demonstrate that the treatment is maintained.
- Systems with corrosion control treatment would be subject to a different compliance determination for water quality parameters.
- Systems on reduced lead and copper monitoring would be required to use representative sampling sites.
- Lead and copper tap samples could be invalidated if certain criteria were met.
- Small water systems (serving 3,300 or fewer people) could obtain waivers for lead and copper tap sampling.
- Analytic methods for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature prescribed at 40 Code of Federal Regulations, Section 141.89 [Federal Register (FR) 56 (110), 26460-26564, June 7, 1991; amended July 15, 1991 (56 FR 32113), June 29, 1992 (57 FR 28786), June 30, 1994 (59 FR 33860), and January 12, 2000 (65 FR 1250)] would be incorporated by reference in proposed new section 64670.

Adoption of these requirements would satisfy the mandate in section 116350, H&S Code, and federal primacy requirements related to the adoption of regulations at least as stringent as the federal. However, there are some differences between the federal and proposed state regulations:

- Section 64670(d) proposes to specify the timeframe for coming into compliance with chapter 17.5 for both new systems and systems that change size categories; there is no comparable federal requirement.
- A number of terms are defined in order to simplify and reduce the wording in the state regulation text for the sake of clarification: action level exceedance (section 64671.08), period (section 64671.55), tap sampling (section 64671.73), water quality parameter (WQP) (section 64671.75), and WQP monitoring (section 64671.80).
- Section 64671.15 defines the term “Detection Limit for Purposes of Reporting” or “DLR” for consistency with other state regulations.
- Section 64673(c)(2)(B) sets the timeframe for beginning corrosion control treatment installation in order to facilitate completion on schedule; there is no comparable federal requirement.
- Section 64675(c) specifies the requirements with which the water supplier must comply in order to determine sampling sites; there is no comparable federal requirement.
- Section 64678(b) establishes how to use levels between the method detection level and the practical quantitation level (PQL) (known as the DLR in California); this is not directly specified in the federal requirements, but consistent with federal intent; it is a requirement in the existing Chapter 17.5.
- Section 64678(c) establishes that levels less than the method detection level shall be considered zero; this is not directly specified in the federal requirements except for source water monitoring, but consistent with federal intent; it is a requirement in the existing chapter 17.5.
- Section 64684(d)(2)(C) clarifies that when sampling is less than daily, the daily value applies to the day that the supplier receives the lab result or the 14th day, whichever comes first. The Department determined that for some water quality parameters, e.g., zinc, phosphate, specific conductance, and total alkalinity, in-house lab results are not available for at least 48 hours and for water suppliers contracting with commercial laboratories, two weeks is the normal turnaround time with surcharges being levied for shorter turnaround times. One large supplier reported that costs rose by 50% to have the shortest available turnaround time of 5 days. Since the highest required monitoring frequency is biweekly and there is no direct relationship between these parameters and risks to public health, applying the result to the day the supplier receives it is appropriate. The supplier cannot take action until aware that there is a problem. The drafted language would support the designation of optimal levels/ranges for water quality parameters and thereby encourage full corrosion control treatment

optimization without penalizing suppliers that monitor with the required frequency [by comparison reference 40 CFR 141.82(g)].

AUTHORITY: Sections 100275, 116350, 116365, 116375, and 116385, Health and Safety Code.

REFERENCE: Sections 116325 through 116750, Health and Safety Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: Annual savings that are not measurable.
- B. Fiscal Effect on State Government: Annual savings that are not measurable.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: Small water systems (serving 3,300 or fewer people) could obtain waivers for lead and copper tap sampling under the proposed regulations, and this provision could result in a significant cost savings for small water systems, since sampling would be required only once every 9 years instead of annually or triennially, depending on the system.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California. The proposed regulations should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed

regulations would not result in the creation or elimination of water systems. The impact of the regulations will be insignificant. Based on previous experience, the Department does not expect that the monitoring costs estimated for this regulation will affect the number of businesses in California, while the overall net savings could be of benefit.

- (3) The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the regulations would not affect small business because Government Code Chapter 3.5, Article 2, Section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the

written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-657-1411); FAX (916-657-0153); TDD (916-657-2861); or email (civilrights-ra@dhs.ca.gov).

DEPARTMENT OF HEALTH SERVICES

R-21-01

Dated:

Diana M. Bontá, R.N., Dr.P.H.
Director